

Robert A. Weikert (Bar No. 121146)
rweikert@nixonpeabody.com
Dawn N. Valentine (Bar No. 206486)
dvalentine@nixonpeabody.com
NIXON PEABODY LLP
One Embarcadero Center
San Francisco, California 94111-3600
Tel: (415) 984-8200
Fax: (415) 984-8300

David L. May (appearance *pro hac vice*)
dmay@nixonpeabody.com
Jennette E. Wiser (appearance *pro hac vice*)
jwiser@nixonpeabody.com
NIXON PEABODY LLP
799 9th Street NW
Washington, DC 20001-4501
Tel: (202) 585-8000
Fax: (202) 585-8080

Jason T. Kunze (appearance *pro hac vice*)
jkunze@nixonpeabody.com
NIXON PEABODY LLP
70 West Madison Street, 35th Floor
Chicago, IL 60602
Tel: (312) 977-4400
Fax: (312) 977-4405

Attorneys for Stardock Systems, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STARDOCK SYSTEMS, INC.,

Plaintiff,

vs.

PAUL REICHE III and ROBERT
FREDERICK FORD,

Defendants.

AND RELATED COUNTERCLAIM

Case No.: 4:17-cv-07025-SBA

**SECOND DECLARATION OF BRADLEY R.
WARDELL IN SUPPORT OF STARDOCK
SYSTEMS, INC.'S MOTION FOR
PRELIMINARY INJUNCTION**

SECOND WARDELL DECLARATION IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

Case No. 17-cv-07025-SBA

1 I, Bradley R. Wardell declare:

2 1. I am the founder, President and CEO of Stardock Systems, Inc. (“Stardock”).
3 Except as otherwise indicated, the following is within my own personal knowledge and if called
4 upon to do so I would and could competently testify to the same.

5 2. As I indicated in my previous declaration, Steam is essentially the “Walmart” of
6 digital video game distribution. It is the primary and most popular distribution source. Stardock
7 therefore relies on Steam, as well as another online retail platform, GOG.com (formerly Good
8 Old Games) (“GOG”), to actually distribute and launch its games. The Steam and GOG sites do
9 not provide just download services; they provide the entire installation infrastructure.

10 3. If the delivery mechanism provided by Steam and GOG was eliminated for *Star*
11 *Control®: Origins* (“*Origins*”), then access to the game would no longer be available for anyone.
12 Through Steam and GOG, Stardock sells “keys” that will give the purchaser access to the online
13 game. *Origins* was developed to be accessed and played through the infrastructure provided by
14 Steam and GOG. The game is not otherwise operational.

15 4. Games are developed for specific distribution platforms, namely Steam or GOG.
16 Steam and GOG are not just online stores, they are the actual software platforms that the games
17 operate on and use to function. Accordingly, there are Steam and GOG versions of *Star Control:*
18 *Origins*, but no “Stardock” version of the game. There is no version of *Origins* that is not
19 dependent on the online delivery mechanism. For instance, a customer who pre-ordered *Origins*
20 from the Stardock website encountered the following screen:

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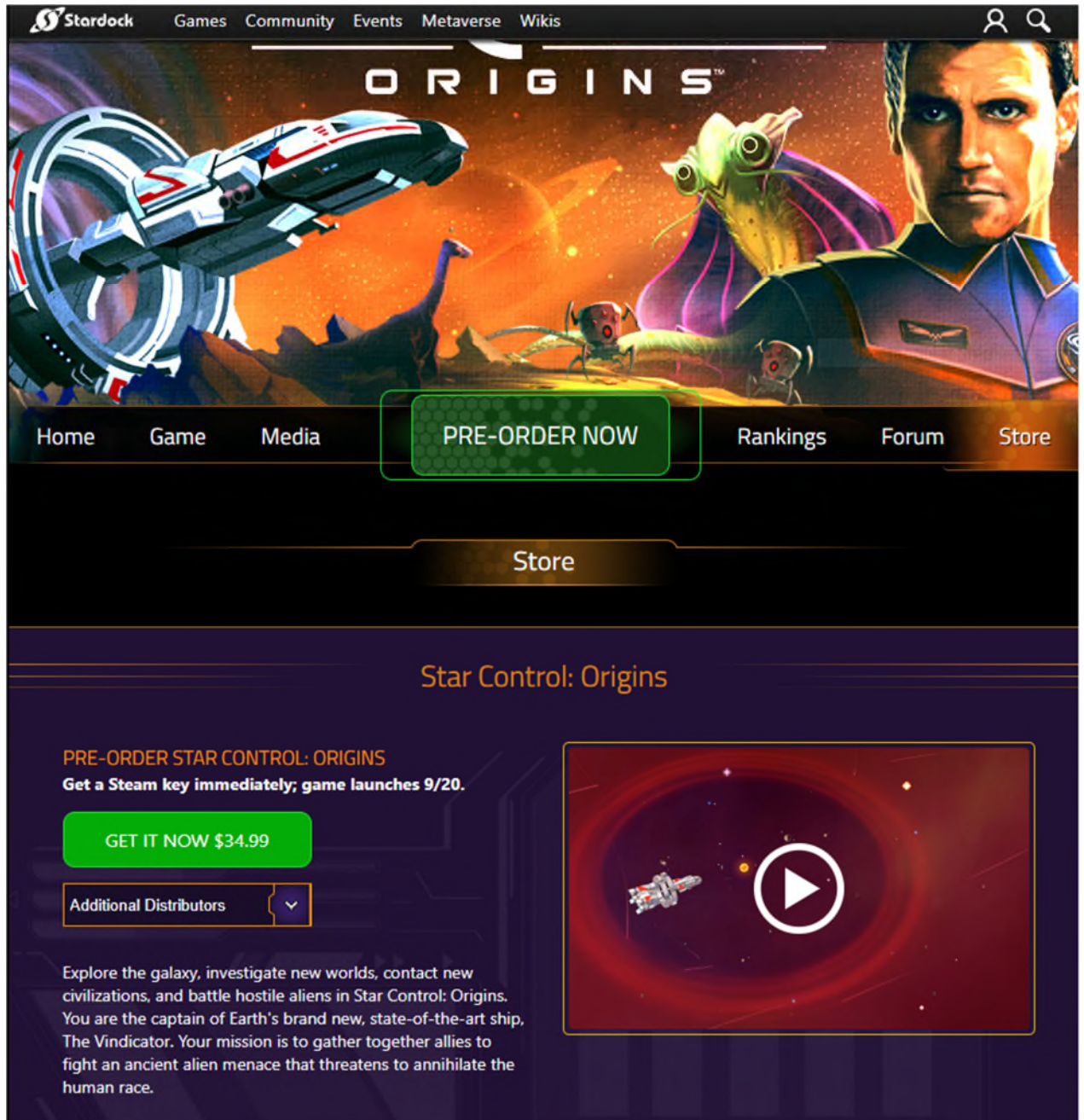
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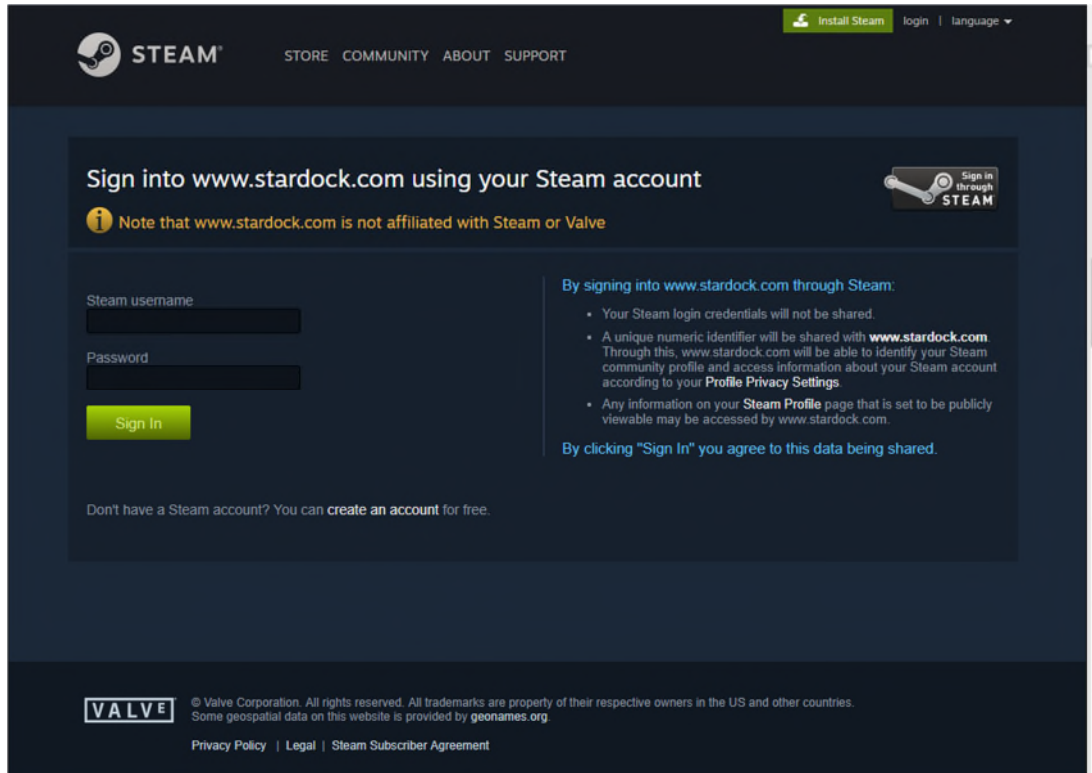
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5. The pre-order screen on the Stardock website allowed customers to “Get a Steam key immediately...” Once a customer clicked through to purchase the game, the customer was redirected to the following Steam portal:



This portal allowed the customer to actually purchase the game after it was released, and, through the Steam interface and infrastructure, play the game.

6. Removal of *Origins* from Steam and GOG will result in removal of the game from the marketplace because the functionality of the game is specifically designed for distribution through Steam or GOG. Thus, if *Origins* is removed from Steam or GOG, players who have already purchased the game will also no longer be able to play it.

7. Once a DMCA notice results in the removal of a game from the online retailer, that game is no longer available. Thus, when Defendants in this litigation issued a DMCA notice in connection with the beta versions of the “Fleet Battles” app and the downloadable content (“DLC”), which resulted in Steam and GOG removing that content from their respective sites, Stardock was no longer able to provide Defendants with access to that content.

1 8. No beta or other version of *Origins* was released until the game's official
2 September 20, 2018 launch. As discussed above, there were beta releases of the game's Fleet
3 Battles feature and downloadable content. Those were the only materials actually released in
4 connection with *Origins* prior to September 20, 2018. Stardock's internal builds of the game
5 were never distributed as releases and no version of the released *Origins* game was available to
6 the public prior to September 20, 2018.

7 9. The expression and gameplay of *Origins* is dramatically different, as one would
8 expect when comparing games nearly 30 years apart. Furthermore, *Origins* tells a different story,
9 with vastly different expression.

10 10. Throughout its communications with Reiche and Ford regarding the release of *Star*
11 *Control®: Origins*, Stardock continuously made its intentions clear that it preferred to collaborate
12 with them on the project and that *Origins* would be a successor to the Classic Star Control Games
13 under the STAR CONTROL mark owned by Stardock.

14 11. Reiche and Ford have known about *Origins* and Stardock's intention to create a
15 successor to the Classic Star Control Games under Stardock's STAR CONTROL mark since at
16 least as early as 2013.

17 12. Mr. Reiche's Declaration includes images at Paragraph 84 of spaceships that he
18 compares to those that appeared in *Star Control I* and *Star Control II*. These ship images do not
19 appear in *Origins* or any other Stardock-generated material or content.

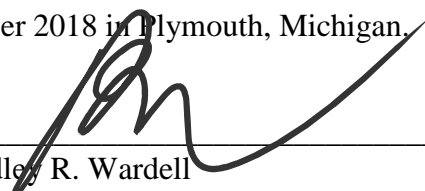
20 13. At Paragraph 82 of Mr. Reiche's Declaration, he purports to compare a *Star*
21 *Control II* map to the *Origins* map. What he does not mention, though, is that the *Star Control II*
22 map bears an Accolade copyright notice: ©Accolade.

23 14. At Paragraph 40 of Mr. Reiche's Declaration, he alleges that the 1988 License
24 Agreement could not have been assigned without his consent and that Atari, Inc. and Stardock
25 never asked for nor received such consent from Mr. Reiche. As alleged in our Second Amended
26 Complaint, Stardock believes that Reiche never owned the rights to *Star Control I* and *Star*
27 *Control II* that he purported to license in the 1988 License Agreement, and thus, there was
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1 nothing owned by Reiche to be assigned. So, his consent was not needed even if it was required
2 (which Stardock disputes).

3 I declare under penalty of perjury under the laws of the United States and the State of
4 California that the foregoing is true and correct.

5 Executed this 21st day of September 2018 in Plymouth, Michigan.

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9 Bradley R. Wardell
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